

REMARKS

Reconsideration is requested.

Claim 29 has been added and finds support throughout the specification. No new matter has been added.

Claims 15-18 and 20-29 are pending.

The Section 112, second paragraph, rejection of claims 15-18 and 20-28 is, to the extent not obviated by the above, traversed. Reconsideration and withdrawal of the rejection are requested as one of ordinary skill in the art would appreciate the metes and bounds of the claimed invention.

The Section 102 rejection of claims 15-18 and 20-28 over Ha, et al. (U.S. Patent No. 5,585,104), is traversed. Reconsideration and withdrawal of the rejection are requested as the cited patent fails to teach each and every aspect of the presently claimed invention. Reconsideration and withdrawal of the rejection are requested in view of the following distinguishing comments.

The Examiner will appreciate that the claimed invention provides a cosmetic composition in the form of an aqueous gel, comprising:

- a) at least one non-crosslinked acrylic polymer having a C₈ - C₃₂ hydrophobic chain, in an amount of 0.8 to 20%.
- b) as sole surfactant, at least one non-ionic surfactant in an amount of less than 1% by weight with respect to the total weight of the composition, the ratio (R) of surfactant to non-crosslinked polymer varying from 1/20 to 1/5, and

c) at least one insoluble conditioning agent selected from silicones, hydrocarbons, fatty alcohols and fatty esters, in an amount of 0.01 to 20% by weight with respect to the total weight of the composition.

U.S. Patent No. 5,585,104 is understood to disclose compositions in the form of oil in water emulsions, comprising:

- a) from 0.01 to 5% by weight of a copolymer containing units derived from acrylic acid alkyl-substituted acrylic acids, as well as salts and C₁₀ - C₃₀ alkyl esters thereof,
- b) from 0.05 to 20% by weight of a non-ionic non-emulsifying deterutive surfactant having a HLB greater than 11, such as acid glycosides,
- c) from 0.5 to 40% by weight of oils such as hydrocarbons or silicones, and
- d) from 20 to 99.44% by weight of water.

The characterizing clause (c) of the present application corresponds, at best, to clause (c) of the cited U.S. patent; see column 13 line 6 to column 16 line 14: the oils recited in the description of Ha, et al. (i.e., silicones, hydrocarbons, fatty esters and fatty alcohols), are included in the definition of the insoluble conditioning agents of the present application. In the examples of Ha, et al., fatty alcohols, fatty esters and hydrocarbons are disclosed.

The characterizing clause (b) of the present application corresponds, at best, to (b) of Ha, et al., wherein examples of non-ionic surfactants are given (column 7, line 50 to column 9 line 59), including alkyl glycosides (column 8, line 35 to line 51) and

particularly glucosamide (non-ionic surfactant) which is present in an amount of 0.96% in examples 1 to 8.

However, the ratio $R = (\text{non-ionic surfactant}) / (\text{copolymer})$ is not discussed in the description of Ha, et al., and in the examples said ratio is always higher than 1/5 ($R = 2.4$ in Example 1; $R = 4.275$ in Examples 2 - 7; $R = 11.275$ in Example 8). It should be noted that this ratio is calculated here with respect to the crosslinked polymer.

The Section 102 rejection of the claims over Ha, et al., should be withdrawn as the reference fails to teach or suggest this as part of the presently claimed invention.

The characterizing clause (a) corresponds, at best, to (a) of Ha, et al., since the compounds disclosed belong to the same family as those of the present application (see Ha, et al., column 3, line 60 to column 4, line 16). But although the use of crosslinked copolymers may be disclosed and illustrated, the non-crosslinked copolymers are merely mentioned in a general manner. And in the examples, only crosslinked copolymers are used (Pemulen and Carbomer 954).

Accordingly, the claimed characteristics of the composition of the present invention are not identically disclosed or suggested by Ha, et al., since:

- the ratio (R) is not discussed by Ha, et al., and in the Examples the ratio is much higher than the one recited in the claims of the present application,
- no non-crosslinked copolymer is specifically disclosed by Ha, et al.: only the preferred copolymers, i.e., the crosslinked ones, are disclosed in a concrete manner, and finally

DUPUIS et al
Serial No. 09/341,241
March 21, 2003

- Ha, et al. discloses emulsions, not gels.

The Section 102 rejection should be withdrawn.

The Section 103 rejection of claims 15-18 and 20-28 over Almaric (U.S. Patent No. 5,670,471) is traversed. Reconsideration and withdrawal of the rejection are requested in view of the following distinguishing comments. Almaric discloses compositions containing from 2 to 15%, and preferably from 5 to 30% of at least one surfactant (column 4 lines 17-40). Accordingly, Almaric could not have suggested to one of ordinary skill in the art to prepare a composition containing less than 1% of a surfactant.

Withdrawal of the Section 103 rejection is requested.

The claims are submitted to be condition for allowance a Notice to that effect along with return of an initialed copy of the attached PTO-1449 Form. As indicated in the attached Information Disclosure Statement, the cited documents will be forwarded under separate cover to the Examiner upon receipt by the undersigned. The Examiner is requested to contact the undersigned in the event the case is due for Action by the Examiner prior to a further submission of the references having been matched with the Patent Office file.

The Examiner is requested to contact the undersigned if anything further is required to advance the present case to allowance.

DUPUIS et al
Serial No. 09/341,241
March 21, 2003

Respectfully submitted,

NIXON & VANDERHYE P.C.

By: _____



B. J. Sadoff

Reg. No. 36,663

BJS:plb
1100 North Glebe Road, 8th Floor
Arlington, VA 22201-4714
Telephone: (703) 816-4000
Facsimile: (703) 816-4100